

*John Ball* Appellant.

*Nathaniel Ridler* Respondent.

## The Appellant's CASE.

1691.

**J**OSEPH WOOD having involved his Father *John Wood* in great Debts, devised Lands of 50 *l. per Ann.* value to his said Father and his Heirs, in order to make him some satisfaction, and dies.

Nov. 1693.

*John Wood* being a Factor, and indepted in more Money than his personal Estate would extend to pay, devised these Lands to his two Daughters, *Sarah* and *Mary Wood*, whom he made Executrices, and died.

The Executrices imployed the Appellant to gather in *John Wood's* Estate and pay his Debts, and directed him to pay all other Debts before a Debt of 729 *l. 3 s. 3 d.* to *Walter Ridler*, who being their Relation and Rich, would and could stay for his Money, and for whose satisfaction they endeavoured to sell those Lands.

Nov. 1695.

But the scarcity of Money and high Taxes on Land preventing them from selling, *Mary Wood*, who survived *Sarah*, devised those Lands to the Appellant and his Heirs, and made him Executor, and dies.

The Appellant endeavoured to sell these Lands for payment of *Walter Ridler's* Debt due from *John Wood*; but the continuance of high Taxes hindering him, he plac'd the Rents of these Lands to the Credit Account of *John Wood's* Estate, and believing he had a good Title to the Lands, never declared want of Assets, and in his Accounts sent to the Respondent gave Credit for the value of these Lands, as if they had bin ready Money or Bank Notes for Monies in his hands.

May 1697.

*Walter Ridler* dies, making the Respondent his Executor.

The Heir of *John Wood* commenced a Suit in the Court of Exchequer against the Appellant for these Lands, and evicted them from him, because *John Wood* (who was ignorant of the Law, and drew the Will himself) had not used sufficient Words to convey an Inheritance to his Daughters, as he intended, and as his Daughter *Mary* apprehended, who devised these Lands over to the Appellant and his Heirs.

The Appellant gave the Respondent notice of this Eviction, and that there were not Assets left to pay the 729 *l. 3 s. 3 d.* due to *Walter Ridler*.

The Respondent notwithstanding brought a Bill in Chancery to compel the Appellant to pay that Money to the Respondent, as Executor of *Walter Ridler*; and founded his Charge upon the Appellant's not declaring want of Assets till after the Lands were evicted, and upon the Appellant's Accounts, whereby he gave Credit for the value of these Lands.

The Appellant by his Answer set forth the reason why he did not own want of Assets sooner, and that it was upon the belief of his having a good Title to these Lands, he omitted to do so, and gave Credit for the value of these Lands in Bank Notes, being the only current Payment then in Trade.

At the first hearing of the Cause, the Master of the Rolls, and upon a rehearing the Lord Keeper declared the Appellant had made himself Debtor by his Accounts, and without any other proof of Assets, or any direction to inquire of Assets, or any proof that the Appellant had wasted or misapplied *John Wood's* Estate, decreed him to pay the 729 *l. 3 s. 3 d.* with Interest and Cost.

✍ Executors are chargeable only in respect of Assets, and ought not to be decreed to pay Debts without a confession or proof of Assets, or an enquiry and finding of Assets, none of which was in this Case, but on the contrary it was proved that the Appellant had no Assets besides the Lands evicted.

*John Hawles,*  
*Samuel Harris.*